



**Interpretation of the Director
Under Seattle Municipal Code Title 23**

Regarding the

Property at

5137 South Director Street

DPD Interpretation No. 11-002

(Project No. 3012428)

Background

This interpretation was requested by attorney Patrick Mullaney on behalf of Jean Veldwyk, owner of the property at 5137 South Director Street. The issue raised is whether the property is subject to regulation as a wetland as defined and regulated under Seattle's Environmentally Critical Areas Ordinance, or whether the conditions were unintentionally created as a result of construction of a road, and thus excluded from the definition.

Findings of Fact

1. The property at 5137 South Director Street, described as Lots 27, 28 and 29, Lenhart and Lindsay's Rainier Beach Tracts (King County Assessor's Parcel No. 426570-0145) is a 12,600-square-foot parcel in an NC3-40 zone (Neighborhood-Commercial-3, subject to a 40-foot structure height limit). It is a through lot, with frontage on South Director Street to the north and South Fisher Place to the south. It is currently developed with a single family house, built in approximately 1920 at the northeast corner of the property, and a detached garage at the center of the property. The property is in an area that was once under Lake Washington, but has been above water level since 1916 when the level of the lake was lowered by the Montlake Cut.
2. A portion of the property, approximately 1000 square feet in area, between the garage and the south lot line, is currently mapped as a wetland on the City's GIS system. Earlier versions of the critical areas maps, dating from 2002 and 2005, did not reflect a wetland or any other environmentally critical area on the property at this address. The GIS maps of environmentally critical areas are advisory, and subject to verification based on the standards in the code.
3. South Fisher Place, previously unimproved, was improved in 2002-2003 in conjunction with construction of a Safeway store on the property to the south of that right-of-way. A grove of approximately 30 Lombardi poplar trees, located within that right-of-way, was removed. A drainage ditch on the south side of the right-of-way also was removed. A water line and a stormwater line were installed in the right-of-way, and the surface of the right-of-way was raised to accommodate these improvements.

4. A topographic survey performed on March 11, 2011 indicates that the subject property slopes slightly down, from west to east, from an approximate elevation of 28 feet to an elevation of 25 feet. The adjacent gravel roadway in the South Fisher Place right-of-way slopes down from an elevation of 34 feet to 28 feet suggesting that the level of the roadway is currently three to six feet above the lot.
5. Reports by two experts, Edgar K. Sewall and Robert Pride, prepared in May of 2011, were submitted in support of the position that the wetland condition resulted from the road construction. The report by Mr. Pride, a Professional Engineer, asserts that a trench formerly located along the north side of the South Fisher Place right-of-way was removed with the road construction, and that, in response to complaints about drainage from the right-of-way, Safeway installed a trench and French drain system on the lot to the west side of the Veldwyk property, which drains onto the Veldwyk property. The topographic survey reflects a slight trench along the South Fisher right-of-way on the property to the east of the Veldwyk property, but no trench on the Veldwyk property.
6. Mr. Pride further posits that placement of fill in the right-of-way compressed the peat soils below the right-of-way, causing the groundwater level on the adjacent property to rise. Borings taken in June of 2002 in preparation for construction of the Safeway store reflect that there was peat starting 5 to 10 feet below the surface in the area adjacent to the Fisher Place right-of-way.
7. Mr. Pride's report concludes, in his opinion, that the wet condition of the property is not its natural or historic state, but rather that it resulted primarily from the improvements in the South Fisher Place right-of-way (placement of fill and removal of the poplar trees), with removal of a ditch on the north side of that right-of-way and installation of the drainage system on the neighboring property as contributing factors.
8. The report by Mr. Sewall, a Professional Wetland Scientist, indicates that the presence of peat soils, which in other cases may be indicative of a wetland, in this case is likely a remnant of the past when the property was under Lake Washington. Mr. Sewall notes that certain wetland plant species, soft rush (*Juncus Effuses*) and reed canary grass (*Phalaris Arundinacea*) are currently on the property, but that these evidently are of recent origin. He notes, based on photographs of the site taken prior to the improvement of Fisher Place, that the site had previously supported vegetation of an upland nature – cat's ear (*Hypochaeris Radicata*), dandelion (*Taraxacum Officinale*) and a lawn of mowed grass.
9. Development within wetlands is restricted under Seattle's Regulations for Environmentally Critical Areas, codified at Chapter 25.09 of the Seattle Municipal Code. For purposes of that chapter, Section 25.09.020.C describes what areas are to be regulated as wetlands:

C. Wetlands. Wetlands are those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and stormwater ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, **or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway.** Wetlands include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands. The method for delineating wetlands shall follow the "Washington State Wetlands Identification and Delineation Manual" as adopted by the State Department of Ecology (Publication #96-94.)

(Emphasis added.)

Conclusions

1. The fact that the property was not mapped as a wetland prior to time of the improvements in the Fisher Place right-of-way, together with the historic photos showing plant species common to non-wetlands properties rather than wetlands vegetation, provides support for the position that the property was not a wetland prior to the right-of-way improvement.
2. Although the nature of the soils, including peat below the surface, might in some circumstances indicate a wetland, the fact that the property was historically submerged provides a plausible explanation for the soils, and does not compel a conclusion that the property is a wetland.
3. The nature of the work at the time of the right-of-way improvement might reasonably have resulted in more water collecting at or near the surface on the property, allowing wetlands vegetation to take root. We cannot disagree with the professional engineer's conclusion that these improvements, which occurred after July 1, 1990, had the effect of creating the wetland.
4. Because the wetland conditions on the property resulted from the right-of-way improvements, the property is not subject to regulation as a wetland under Seattle's regulations for environmentally critical areas. (This interpretation is limited to the application of the Seattle Municipal Code. It is possible that the property would still be regulated as a wetland by other agencies, such as the U.S. Army Corps of Engineers, applying Section 404 of the Federal Clean Water Act. How the property is regulated by other agencies is a matter that is beyond the Department's authority and beyond the scope of this interpretation.)

Decision

The property at 5137 South Director Street qualifies for the exception from the definition of wetland under Seattle's Regulations for Environmentally Critical Areas, and is not subject to regulation as a wetland under those provisions.

Entered this 4 day of August, 2011

(signature on file)

Andrew S. McKim

Land Use Planner – Supervisor